

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL ELLIOT KWABENA OKYERE DARKO, :
: Plaintiff, :
: : 23-CV-3232 (JMF)
-v- :
AUBREY DRAKE GRAHAM et al., :
: Defendants. :
: :
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JESSE M. FURMAN, United States District Judge:

By Memorandum Opinion and Order entered on November 8, 2023, the Court denied a motion by Plaintiff Michael Elliot Kwabena Okyere Darko (“Darko”) seeking an order permitting alternate service on Defendants OVO Sound LLC, Alexander Lustig, and Christian Beau Anastasiou Astrop. *See* ECF No. 70. With respect to Lustig and Astrop, the Court gave Darko until November 17, 2023, to renew his motion. *See id.* at 1. By contrast, the Court ordered Darko to show cause as to “why his claims against OVO Sound LLC should not be dismissed for failure to serve,” and cautioned that if he did not do so, “his claims against OVO Sound LLC w[ould] be dismissed without further notice to the parties.” *Id.* at 2. On November 17, 2023, Darko renewed his motion as to Lustig and Astrop. *See* ECF No. 79. But he did not even attempt to show cause why his claims against OVO Sound LLC should not be dismissed. Accordingly, his claims against OVO Sound LLC are hereby dismissed for failure to serve.

Darko’s renewed motion as to Lustig and Astrop still falls short. Darko now identifies the email addresses through which he proposes to serve Lustig and Astrop, *see* ECF No. 80 (“Pl.’s Mem.”), at 7-11, and attaches exhibits of the SoundCloud and Facebook pages from which he obtained those email addresses, *see* ECF Nos. 80-1 (“Ex. A”), 80-2 (“Ex. B”), 80-4 (“Ex. D”). To justify service by email, however, a plaintiff must present evidence that the defendant “used or

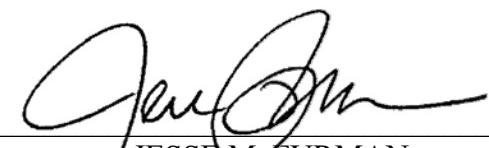
checked th[e] email address, for business purposes or otherwise, or that an e-mail sent to th[e] address would have been brought to [the defendant's] attention.” *AMTO, LLC v. Bedford Asset Mgmt., LLC*, No. 14-CV-9913, 2015 WL 3457452, at *8 (S.D.N.Y. June 1, 2015); *see generally Luessenhop v. Clinton Cnty.*, 466 F.3d 259, 269 (2d Cir. 2006) (reaffirming that a method of service must provide “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections” (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950))). Here, Darko fails to make that showing. Specifically, while Darko provides some evidence that the SoundCloud account is currently in use by Lustig, *see* Pl.’s Mem. 7-9 & Ex. A, at 3, and that the Beaux Nox Facebook Page is associated with Astrop, *see* Pl.’s Mem. 10-13 & Ex. D; ECF No. 80-5, he presents no evidence that the email addresses *themselves* are used, let alone used now, by the respective Defendants.

Accordingly, Darko’s renewed motion for alternate service as to Lustig and Astrop must be and is DENIED, once again without prejudice to renewal. For efficiency’s sake, however, Darko should defer any new motion until after the Court rules on the appearing Defendants’ motion to dismiss, filed on November 15, 2023. *See* ECF No. 75. After all, if the Court grants the motion to dismiss, it may moot the issue. And if the Court denies the motion to dismiss, Darko may obtain information relevant to service on Lustig and Astrop through discovery or otherwise.

The Clerk of Court is directed to terminate ECF No. 79 and to terminate OVO Sound LLC as a Defendant.

SO ORDERED.

Dated: November 21, 2023
New York, New York



JESSE M. FURMAN
United States District Judge